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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ANTHONY LEE,

Defendant and Appellant.

E063165

(Super.Ct.No. FSB1403185)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. R. Glenn Yabuno,  
Judge. Affirmed with directions.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, and Barry Carlton, Deputy  
Attorney General, for Plaintiff and Respondent.

## I. INTRODUCTION

Defendant and appellant, Michael Anthony Lee, was convicted of the attempted first degree burglary of the Trujillo home, one of three homes he entered, or attempted to enter, in a San Bernardino neighborhood on the afternoon of July 4, 2014. (Pen. Code, §§ 664, 459, count 3.)<sup>1</sup> Defendant was acquitted of burglarizing the first home he entered, the Perez home (§ 459, count 1), but was found guilty of assaulting its owner, Candelaria Perez (§ 240), a lesser included offense of the charged offense of aggravated assault (§ 245, subd. (a)(4), count 2).

On this appeal, defendant claims his attempted burglary conviction in count 3 must be reversed because insufficient evidence shows he entered the Trujillo home with the intent to commit a theft or felony. Instead, he claims the evidence showed he was in a paranoid, drug-induced state and believed he was being chased when he entered the Trujillo home. He also claims, and the People concede, that his abstract of judgment must be corrected to reflect that he was awarded 518 days of custody credits, not 439 days. We remand the matter to the trial court with directions to correct the abstract of judgment to properly reflect defendant's custody credits. In all other respects, the judgment is affirmed.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

## II. FACTUAL AND PROCEDURAL BACKGROUND

### A. *Prosecution Evidence*

On July 4, 2014, at approximately 1:00 p.m., defendant entered, or attempted to enter, the Perez, Jimenez, and Trujillo homes. Defendant first entered the Perez home through an unlocked back door. Candelaria Perez and her three daughters were home when defendant entered. Defendant went into Ms. Perez's bedroom, where he held her against the bedroom wall and choked her for several seconds. After releasing her, she fell to the ground, where defendant kicked her, and slammed the door against her chest and midsection. He also threw one of Ms. Perez's daughters to the ground after she came out of her bedroom and attempted to prevent him from leaving the house. After defendant walked out of the Perez home, the daughter called 911. Ms. Perez was treated at the hospital, where she complained of back pain, neck pain, a cut to her neck, pain to her right side, a headache, memory loss, and nightmares.

Shortly after he left the Perez home, defendant broke into the attached garage of the Jimenez home and was screaming and banging on the interior back door to be let into the home. The residents were home and demanded that defendant leave, which defendant did. One of the residents called 911 to report defendant's attempt to enter the home.

Shortly after 1:00 p.m., the police received other calls regarding a male running across roofs and through yards in the neighborhood and were dispatched to a home near both the Jimenez and Perez homes. Upon arrival, the police were directed by residents to the Trujillo home, which was a few houses away, because residents had seen defendant in

the Trujillo's backyard. Nobody was home at the time defendant entered the Trujillo home. The police entered the home through an unlocked back door, which defendant had also used, and announced their presence. Defendant yelled, "I'm here. I'm here," and the police took defendant into custody without incident. Defendant did not take anything from the Trujillo home, but he tore apart the master bedroom by overturning the bed, pushing over a dresser, knocking a mirror and a television to the floor, ripping drawers out of cabinets, and throwing the contents of a dresser and cabinet drawers on the floor, leaving clothes and paper scattered all over the room.

#### *B. Defense Evidence*

Defendant did not testify, and he presented no other affirmative evidence. The defense theory of the case was that he was undergoing a "psychotic or drug-induced belief he was being chased,"<sup>2</sup> and that he did not have the requisite intent to commit a theft or felony when he entered the Perez and Trujillo homes.

#### *C. Charges and Verdict*

An information charged defendant with first degree burglary of the Perez home (§ 459, count 1), assault by means likely to produce great bodily injury on Ms. Perez (§ 245, subd. (a)(4), count 2), and first degree burglary of the Trujillo home (§ 459, count 3). Defendant was not charged with any crime based on his attempt to enter the Jimenez home.

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<sup>2</sup> Following his arrest, defendant requested an inquiry into his sanity (§ 1368), and, after being evaluated by several psychiatrists, was found mentally competent to stand trial.

Defendant was acquitted of the count 1 first degree burglary charge of the Perez home, and was convicted of the lesser offenses of simple assault on Ms. Perez in count 2 (§ 240), and of attempted burglary of the Trujillo home in count 3 (§§ 459, 664). The trial court sentenced defendant to three years in state prison on count 3, and to 180 days in county jail on count 2, with credit for time served. Defendant was awarded a total of 518 custody credits (259 actual days, plus 259 conduct days). However, the abstract of judgment only credited defendant for 180 actual days and 259 conduct days, for a total of 439 days.

### III. DISCUSSION

#### *A. Substantial Evidence Shows Defendant Intended to Commit Theft or a Felony When He Entered the Trujillo Home*

Defendant contends insufficient evidence supports his attempted burglary conviction of the Trujillo home in count 3, because the prosecution failed to prove that he intended to commit a theft or a felony when he entered the Trujillo home. Not so.

Where the sufficiency of the evidence is challenged on appeal, the appellate court “must determine from the entire record whether a reasonable trier of fact could have found that the prosecution sustained its burden of proof beyond a reasonable doubt. In making this determination, the reviewing court must consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond

a reasonable doubt. [Citations.]” (*People v. Mincey* (1992) 2 Cal.4th 408, 432, fn. omitted.) “““Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court[,], which must be convinced of the defendant’s guilt beyond a reasonable doubt. ““If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.”” [Citations.]””” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) Substantial evidence includes circumstantial evidence and the logical inferences that the jury may have drawn from the evidence. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) If the verdict is supported by substantial evidence, this court is bound to give due deference to the trier of fact. (*People v. Snow* (2003) 30 Cal.4th 43, 66; *People v. Maury* (2003) 30 Cal.4th 342, 396.)

“Every person who enters any house, room, apartment, tenement . . . with intent to commit grand or petit larceny or any felony is guilty of burglary.” (§ 459.) Section 664 further states that “[e]very person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished . . . .” “One may [be] liable for burglary upon entry with the requisite intent to commit a felony or a theft (whether felony or misdemeanor), regardless of whether the felony or theft committed is different from that contemplated at the time of entry, or whether any felony or theft actually is committed.” (*People v. Montoya* (1994) 7 Cal.4th 1027, 1041-1042.) A burglary can

occur even if the burglar enters an unlocked door, and the crime need not be committed at night. (*People v. Elsey* (2000) 81 Cal.App.4th 948, 954, 961, fn. 5.)

“““While the existence of the specific intent charged at the time of entering a building is necessary to constitute burglary in order to sustain a conviction, this element is rarely susceptible of direct proof and must usually be inferred from all of the facts and circumstances disclosed by the evidence.” [Citation.]” (*People v. Holt* (1997) 15 Cal.4th 619, 669.) “When the evidence justifies a reasonable inference of felonious intent, the verdict may not be disturbed on appeal.” (*People v. Matson* (1974) 13 Cal.3d 35, 41; *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1574.) ““Where the facts and circumstances of a particular case and the conduct of the defendant reasonably indicate his purpose in entering the premises is to commit larceny or any felony, the conviction may not be disturbed on appeal.’ [Citation.]” (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1245.)

A defendant’s intent to commit a theft or felony may be inferred from evidence that, in committing the current theft or felony, he or she acted similarly in past burglaries. (See *People v. Matson, supra*, 13 Cal.3d at pp. 41-42 [defendant used same modus operandi 11 days earlier].) Intent can also be inferred by the “temporal or spatial proximity between the entry and the target or predicate crime . . . .” (*People v. Kwok, supra*, 63 Cal.App.4th at p. 1246.) The intent to commit a theft may also be inferred where the defendant enters and ransacks a victim’s home. (*People v. Wallace* (2008) 44 Cal.4th 1032, 1078.) In *Wallace*, the defendant broke into the victim’s home, beat the

victim, and then ransacked her house. The court held that, “[b]ased on this evidence, a rational jury could find beyond a reasonable doubt that defendant entered the house with the intent to steal (thus committing burglary) . . . .” (*Ibid.*)

Here, substantial evidence shows defendant intended to commit a theft or felony when he entered the Trujillo home. Just minutes after violently assaulting Ms. Perez, defendant broke into the garage of the Jimenez home and banged on the back door, demanding to be let inside the house. After failing to gain entry, he ran through the neighborhood and jumped from roof to roof before he ended up at the Trujillo home. After entering through an unlocked door, defendant ransacked the master bedroom of the Trujillo home, knocking over furniture and appliances, and emptying the contents of drawers and cabinets in his rampage. Based on defendant’s violent assault on Ms. Perez and his rampage inside the Trujillo home, the jury could have reasonably inferred that defendant intended to commit theft or a felony, specifically, felony assault or felony vandalism, when he entered the Trujillo home.

Defendant argues the evidence showed he was undergoing a “psychotic or drug-induced belief he was being chased” when he entered the Trujillo home, and, therefore, he entered the home without intent to commit any crime. However, the jury reasonably rejected this claim. As explained, substantial evidence supports a reasonable inference that defendant intended to commit a theft or felony when he entered the Trujillo home.

Lastly, defendant relies on *People v. Stewart* (1952) 113 Cal.App.2d 687 for the proposition that “‘something else’—in addition to mere presence in the premises” was



required in order to infer he intended to commit theft or a felony when he entered the Trujillo home. Defendant argues that the “something else” might involve evidence that he had moved, taken, or attempted to sell items that were inside the Trujillo home. Contrary to defendant’s contention, the evidence showed much more than defendant’s “mere presence in the premises.” For the reasons explained, the evidence showed defendant was on a violent rampage, and intended to commit theft or a felony when he entered the Trujillo home. We therefore reject defendant’s appeal to reverse his conviction in count 3 for the attempted burglary of the Trujillo home.

*B. The Abstract of Judgment Must be Corrected to Reflect Defendant’s Custody Credits*

Defendant contends the abstract of judgment must be corrected to properly reflect the 518 days of credits that were awarded by the court in its oral pronouncement of judgment, and which were indicated in the sentencing minute order, not the 439 days reflected in the abstract of judgment. The People concede the error. We agree, as “[w]here there is a discrepancy between the oral pronouncement of judgment and . . . the abstract of judgment, the oral pronouncement controls.” (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385.)

#### IV. DISPOSITION

The case is remanded to the trial court to correct defendant’s abstract of judgment to reflect that he was awarded 518 days of custody credit—259 days of actual time served and 259 days of conduct credit—not the 439 days reflected in the current abstract of judgment. The trial court is further directed to forward a certified copy of the amended

abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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KING  
J.

We concur:

HOLLENHORST  
Acting P. J.

MILLER  
J.